

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

**Name of Claimant**

David J. Vogt

94-02225

**Name of Respondent**

Fidelity Brokerage Services

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**REPRESENTATION**

For Claimant/Counter-Respondent: David J. Vogt ("Vogt") appeared pro se at the hearing.

For Respondent/Counter-Claimant: Fidelity Brokerage Services ("Fidelity") was represented by Dennis K. Egan, Esq. of Butzel Long, located in Detroit, Michigan.

**CASE INFORMATION**

Statement of Claim filed: July 19, 1994.

Claimant/Counter-Respondent's Submission Agreement signed on: June 9, 1994.

Statement of Answer filed by Respondent/Counter-Claimant Fidelity on: August 26, 1994.

Respondent/Counter-Claimant Fidelity's Submission Agreement signed on: September 1, 1994.

Counterclaim filed by Respondent/Counter-Claimant Fidelity on: April 10, 1995.

Reply to Counterclaim filed by Claimant/Counter-Respondent Vogt on: April 22, 1995.

### **HEARING INFORMATION**

Pre-Hearing Conference:	None held:
Hearing Date/Sessions:	May 5, 1995 for Two (2) sessions.
Hearing Location:	Detroit, Michigan.

### **CASE SUMMARY**

Claimant/Counter-Respondent Vogt alleged that Respondent/Counter-Claimant Fidelity allowed the purchase of unsuitable securities for Vogt's IRA account. Vogt specifically alleged that between March 25, 1991, and July 30, 1991, 6 put (long term) S & P 500 Index Dec 40 (which expired in Dec 92) and 546 put (long term) S & P Index Dec 35 (which expired in Dec 93) were purchased for Vogt's IRA account. Vogt asserted that Fidelity was grossly negligent in accepting these orders because industry standards do not allow options trading in IRA accounts.

Respondent/Counter-Claimant Fidelity denied any wrongdoing in the allowance of the purchase for Vogt's IRA account. Fidelity specifically asserted:

1. Neither the securities regulations nor the Internal Revenue Code prohibit against trading options in an IRA account;
2. The purchase of options was suitable because Vogt indicated that he had extensive experience in purchasing options and that his objective for his IRA account was speculation; and
3. Vogt received an Options Disclosure Booklet informing him of the risks involved with the options trading. Vogt knowingly assumed these risks.

Based upon the above allegations, Fidelity asserted a counterclaim against Vogt for the losses accumulated in Vogt's IRA account.

In reply to Fidelity's counterclaim, Vogt reasserted the allegations of Fidelity's gross negligence in allowing the purchase of the options in the IRA account.

### **RELIEF REQUESTED**

Claimant/Counter-Respondent Vogt requested actual damages in the amount of \$118,535.55.

Respondent/Counter-Claimant Fidelity requested that Vogt's claim be dismissed and that an award be entered in favor of Fidelity against Claimant Vogt for the losses incurred in his IRA account. Fidelity also requested that the panel find Vogt liable for all costs, legal or otherwise, incurred by Fidelity as a result of this action.

### **OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent/Counter-Claimant Fidelity Brokerage Services is liable for and shall pay to Claimant/Counter-Respondent David J. Vogt the sum of \$25,000.00;
2. The parties shall bear their own costs of arbitration, including attorneys' fees; and
3. Any relief requests not specifically granted are hereby denied.

### **FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Two (2) hearing sessions x \$750.00 per session = \$1,500.00

The National Association of Securities Dealers, Inc. shall retain the \$200.00 filing fee and shall refund the \$750.00 hearing session deposit previously paid by Claimant/Counter-Respondent, David J. Vogt. Pursuant to Section 45 of the Code of Arbitration, Respondent/Counter-Claimant Fidelity Brokerage Services is liable for and shall pay to the NASD the sum of \$200.00 as the

surcharge due under the Section. In addition Respondent/Counter-Claimant Fidelity Brokerage Services is liable for and shall pay to the NASD the sum of \$1,500.00 as forum fees.

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures

Name

Date

/s/ Carole M. Crosby, Esq.

July 19, 1995

Carole M. Crosby, Esq.

Public Arbitrator

Chairperson

/s/ S. Peter Bayekian

July 19, 1995

S. Peter Bayekian

Industry Arbitrator

Dissenting Arbitrator's Signature

Arbitrator Thomas Kizer, Jr., Esq. does not concur in the award.

Name

Date

/s/ Thomas Kizer, Jr., Esq.

July 19, 1995

Thomas Kizer, Jr., Esq.

Public Arbitrator

For NASD Use Only

Date of Decision: July 24, 1995